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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1053

E. K. BEARDEN,
Petitioner,

VERSUS

STATE OF OKLAHOMA,
Respondent.

ERNEST W. CRUMB,
Petitioner,

VERSUS

STATE OF OKLAHOMA,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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March, 1970

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Petitioners, E. K. Bearden and Ernest W. Crumb, under Rule 58 of the Supreme Court of the United States of America, respectfully petitions this Honorable Court for a rehearing on its order of March 2, 1970, denying certiorari herein.

The question for consideration in this petition for rehearing is:

WHETHER OR NOT A DEFENDANT IN A TRIAL COURT HAS BEEN AFFORDED COUNSEL AS GUARANTEED UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA AND DUE PROC-

ESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, WHEN SUCH COUNSEL STANDS MUTE DURING THE TRIAL?

FACTS

Petitioners Bearden and Crumb were charged with the offense of murder in the District Court of Carter County, Oklahoma. These were separate offenses and separate trials were held on each of the defendants on consecutive dates. Each of the defendants had a good and valid defense as appears from the affidavits in the appendix of petitioners' Joint Petition for Writ of Certiorari. Petitioner Bearden shot back only after being shot at at least three times by the deceased. Petitioner Crumb awoke while in the process of being burglarized by the deceased and the life of deceased was taken after an altercation which took place in the bedroom of defendant Crumb.

The trial attorney for the defendants, Petitioners herein, obtained two continuances because of his (the attorney's) ill health. He was denied a third continuance and urged, recommended and insisted to these petitioners that they not allow the trial court to appoint other counsel for them. This trial attorney chose to stand mute during the trial of each of these petitioners and did not conduct a *voir dire;* cross-examine a prosecuting witness; place any witnesses on the stand on behalf of these petitioners; allow these petitioners to testify on their own behalf; or make any kind of statement or argument to the jury on behalf of petitioners. The conduct of this lawyer prevented these petitioners from obtaining a fair trial and they were denied the right of counsel and due process of law.

REASONS WHY CERTIORARI SHOULD BE ALLOWED

REASON NO. 1

THE FACTS BEAR OUT THAT PETITIONERS EACH HAD A GOOD AND VALID DEFENSE.

Even an inexperienced attorney could have prevailed on behalf of the petitioners before a jury under the facts and circumstances giving rise to the charge of murder herein. The jury saw only one side of the coin; the side of the prosecution. The trial court had a duty to see that each of the petitioners were given a fair trial. The record is abundant with animosity between the trial judge and the attorney for the petitioners. It is conceded that the trial court had the right to bring the petitioners to trial. However, the trial court also had the duty to see that these two laymen, neither of whom finished high school, were given their day in court. The Court of Criminal Appeals in its opinion affirming the conviction in both of the petitioners' cases, cited only one case, that of *Mixon* v. *Georgia*, 85 Ga. 455, 11 S.E. 874, where the Supreme Court of Georgia sustained the trial court's action in denying further continuance of trial after defendant had been put on notice that he must procure other counsel if his present counsel continued to be ill, when the time for trial arrived. Based upon this ancient Georgia case, the Court of Criminal Appeals of the State of Oklahoma concluded that the trial judge did not abuse his authority when he denied defendant's last motion for continuance. However, there is a drastic and glaring distinction. In *Mixon* v. *Georgia*, the trial judge appointed another lawyer to protect that defendant's rights, even though the defendant himself did not request or

acquiesce in the appointment. In the instant cases on consideration here, the trial court, even though it knew that defendants had a valid defense, allowed these defendants to go to trial before a jury with no defense whatsoever. It must be concluded that the trial court abused its discretion and denied these defendants their constitutional right of effective counsel and due process of law.

REASON NO. 2

THE CONDUCT OF THE ATTORNEY FOR THESE PETITIONERS IN THE TRIAL COURT MADE A FARCE AND A MOCKERY OF JUSTICE.

The writer of this brief is reluctant to criticize any other practicing attorney. However, unless these petitioners are granted a new trial, a great and severe injustice will have been perpetrated. Therefore, it must be noted that the conduct of Joe Ben Champion, Jr., trial attorney for these petitioners, violated the confidence imposed in him by these petitioners. Joe Ben Champion, Jr., was an able and experienced member of the Oklahoma Bar Association in years past. He had a good reputation as a trial lawyer and had successfully represented many defendants charged with crimes throughout the State of Oklahoma as well as some adjoining states. However, through the past several years, his conduct, both in and out of court, had been something less than exemplary. It is difficult, if not impossible, to capture the magnetism of his personality and his ability to persuade clients to do his will. It must be said that he was, and is, possessed of a magnetic and persuasive personality and it can not be denied that he has the ability to persuade, as evidenced by the affidavits in the appendix of

the Joint Petition for Writ of Certiorari herein. Joe Ben Champion, Jr., convinced these two defendants that to allow the court to appoint other counsel would be tantamount to conviction; that if they would "stick with him," that they would have nothing to worry about; and that even if the jury did convict, that he could obtain a reversal because of the bias of the trial judge against him in the abuse of the trial judge's discretion in not allowing a continuance. These petitioners are not wealthy men and had spent all of their money in the employment of the said Joe Ben Champion, Jr. It is an understatement to say that these petitioners were confused laymen who had placed their faith, and incidentally, their life, on the line with a lawyer who was not acting in their best interests.

It is conceded that these petitioners used bad judgment in retaining the services of Joe Ben Champion, Jr., even after they had been admonished by the court. However, every person who employs an attorney should have the right to take the advice of the attorney. When allowed to practice, the average layman is of the opinion that the Bar Association and the courts of this land have vouched for his ability and integrity. Each of these petitioners had paid Joe Ben Champion, Jr., a substantial fee for representation. The Bar Association had allowed him to practice in the courts of Oklahoma; the petitioners involved placed their lives in the hands of someone in whom they evidently had reason to repose their confidence and faith. It appears from the transcript that the lower court and the Court of Criminal Appeals are attempting to punish the trial attorney, Joe Ben Champion, Jr., through these petitioners. In other words, if the conviction is allowed to stand, the

trial attorney will be deprived of having his way in insisting on a continuance of the trial. It is agreed that the trial attorney's conduct and the advice given these petitioners by said trial attorney was of the lowest grade and standard and that there should have been some way of punishing this attorney. However, these petitioners should not be made to pay the penalty for the unethical and unprofessional conduct of such trial attorney.

Citations presented to this Honorable Court in the original Joint Petition for Writ of Certiorari, which is hereby referred to, uphold the general rule that mere lack of experience, unskillfulness, lack of preparation or of interest, inadequacy or incompetency, mistakes or errors of judgment, improper advice or trial strategy in connection with a case, are ordinarily insufficient to justify setting aside a judgment of conviction. However, where counsel's representation of the defendant is so lacking in intelligence and competence as to reduce the trial to a farce and a mockery of justice, the judgment will be declared void as an invasion of defendant's constitutional right to assistance of counsel. *O'Niell* v. *Tahash* (Minn.), 324 F.2d 18; *O'-Malley* v. *U. S.* (Ohio), 285 F.2d 733; *In re Croft,* 145 Cal. App.2d 155, 302 P.2d 61; *People* v. *Strader,* 23 Ill.2d 13, 177 N.E.2d 126; *Rice* v. *Davis* (Ky.), 366 S.W.2d 153; *Wyatt* v. *State,* 243 S.C. 197, 133 S.E.2d 120. Also see 74 A.L.R.2d 1403, Section 4(b).

It was only learned on March 3, 1970, that this trial attorney had even advised defendant Bearden to hide from the court the fact that he was married to the ex-wife of the deceased. Advice such as this would have been detrimental to defendant Bearden's case even if the trial attorney had

performed the ordinary duties incumbent upon a defense attorney.

The defendant Crumb had never been arrested, even for a traffic violation, prior to the incident giving rise to the charge here. He has a life-long record, exceeding 50 years, of kindness and consideration for his fellowman. He has been a poor, hardworking and good citizen of his Community, State and Nation. He should be able to avail himself of the constitutional safeguards to which every citizen is entitled.

REASON NO. 3

THE TRIAL ATTORNEY FOR THESE PETITIONERS HAS RECEIVED A REPRIMAND FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA, BASED LARGELY UPON HIS CONDUCT AT THE TRIAL OF THESE TWO INVOLVED PETITIONERS.

At the time the Petition for Certiorari was drafted, disciplinary action was pending before the Supreme Court of the State of Oklahoma on Joe Ben Champion, Jr., trial attorney for Bearden and Crumb. On March 3, 1970, the Supreme Court handed down their opinion in the case of *State, ex rel. Oklahoma Bar Association* v. *Champion,* which has not been reported in the Oklahoma or Pacific Reporter System as of this date, but which can be found in Vol. 41, at page 588, of the Oklahoma Bar Journal. A AND ATTACHED HERETO. substantial portion of this opinion concerned itself with Mr. Champion's conduct during the trial of these petitioners, Bearden and Crumb. After a discussion of Mr. Champion's conduct, setting out the finding that he (Mr. Champion), did not participate in the trial, but would stand mute and not say anything, the Court concluded as follows:

"We conclude that Mr. Champion's conduct in the Bearden and Crumb cases was indefensible and indicates an irresponsibility to his clients as well as to the Courts."

The Oklahoma Bar Association had recommended that Mr. Champion not be reinstated because of his conduct in the Bearden and Crumb cases as well as several other cases that were discussed in the opinion. The Supreme Court, in their opinion, postponed final action on the Oklahoma Bar Association's recommendation and Mr. Champion's application for reinstatement, for one year from March 3, 1970, or until further order of the Court, during which time, Mr. Champion was placed on probation and he continues to practice law during this probationary period on a temporary permit. He was publicly reprimanded and was required to pay the cost of the disbarment proceeding. Two of the nine Justices of the Oklahoma Supreme Court dissented from the majority opinion and stated in the dissenting opinion that the conduct of Mr. Champion indicated an inability to conduct himself within the framework of the Canons of Professional Ethics and further stated that the administration of justice would be better served by the denial of the application for reinstatement to the practice of law on the grounds of respondent's demonstrated lack of moral qualifications and competency to practice law.

This finding of the Supreme Court, alone, should be sufficient to uphold the finding that the conduct of the trial attorney in the trials of Bearden and Crumb made a farce and a mockery of justice, thus denying these two petitioners their constitutional right of counsel and of due process of law.

CONCLUSION

These petitioners are not asking for exoneration. They are merely asking that they be allowed their day in court in the form of a new trial. No one will be prejudiced if certiorari is allowed in this instance and their constitutional right to effective counsel and due process of law will be satisfied.

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March, 1970

CERTIFICATE

I hereby certify that a true and correct copy of the above and foregoing petition for rehearing was mailed to G. T. Blankenship, Attorney General, State of Oklahoma, State Capitol Building, Oklahoma City, Oklahoma, this 17th day of March, 1970.

I further certify that the foregoing Petition for Rehearing is presented in good faith and not for the purpose of delay.

I further certify that the above and foregoing petition for rehearing is confined to intervening circumstances of substantial or controlling effect or to other substantial grounds available to petitioners, though not previously presented.

GENE T. RITTER

STATE, ex rel. Oklahoma Bar Assn. v. CHAMPION.

SCBD. No. 2155. March 3, 1970.

Application of Joe Ben Champion for Reinstatement to the Practice of Law in Oklahoma. Application heard, reinstatement postponed; temporary permit to practice law extended one year, or until the further order of the Court; reprimanded and ordered to pay costs.

Paul Vassar, General Counsel for Oklahoma Bar Association, Oklahoma City, for petitioner.

Joe Ben Champion, pro se, Ardmore, and Clyde J. Watts, Oklahoma City, for respondent.

JACKSON, J. Respondent, Joe Ben Champion, Jr., was suspended from the practice of law on August 20, 1968, for his failure to pay his Integrated Bar dues as required by the Rules Creating and Controlling the Oklahoma Bar Association. 5, Chap. 1, App. 1, Article VIII, Sections 1 and 2, O.S. Supp. 1967, pp 122 and 123. Respondent made application for reinstatement to active membership in the Association as authorized by Article VIII, Section 3, Rules, supra, and on September 5, 1968, this Court issued a temporary permit for Mr. Champion to practice law pending the result of his application for reinstatement. While the application for reinstatement was pending Respondent was notified in writing by officials of the Bar Association of numerous specific complaints of dereliction of duty to his clients as an attorney, and was advised that a hearing before the Board of Governors of the Association concerning the specified complaints would be required before the Board could certify to the Supreme Court "whether the applicant has the requisite moral qualifications and is competent to practice law. Article VIII, Section 3, Rules, supra. The hearing was conducted by the Board on November 14, 1968, after Counsel for the Association announced that he would assume the burden of proving Respondent did not have the requisite moral qualifications and competency to practice law. No contention was made that any of the activities of Respondent involved moral turpitude, or that he was incapable of practicing law.

Counsel for the Association introduced evidence in connection with six specific complaints made to the Association by clients of Mr. Champion. These complaints consisted of neglect of duty in keeping his appointments with his clients; in failing to attend court to present his motions and in allowing default judgments to be taken; in failing to answer their correspondence and returning their long distance telephone calls; and in failing to complete the litigation assigned to him after collecting fees and costs.

In one of the foregoing complaints the client complained that Respondent obtained a divorce for her but neglected to file the journal entry of judgment after numerous demands had been made, and neglected to respond to telephone calls and correspondence from her attorney and counsel for the Bar Association in that connection. At the hearing inquiry was made as to

whether it was considered ethical for an attorney to withhold filing a divorce decree based upon whether his fee had been paid. Respondent answered "Well, I'll have to say that if I did not think it was right to do it. I wouldn't have done it." No specific canon of Professional Ethics is cited either for or against this type of practice. However, we regard this as a bad practice. It brings the bench and the bar into disrepute and leads to difficulties and unnecessary confusion, especially so when the judge who tried the case has retired from the bench. See Article IX, Section 2, Rules, supra.

In the case of West v. State of Oklahoma, Okl. Cr., 427 P.2d 653 and 428 P.2d 888, Mr. Champion, as attorney for the appellant, requested and was granted four or five extensions of time to file a brief. No brief was filed and the decision of the trial court was affirmed. The case was reversed and remanded to the trial court for further proceedings in a second opinion after Mr. Champion pointed out in his second petition for rehearing that the trial court had not ruled upon appellant's motion for new trial. Therein the Court of Criminal Appeals said:

> "This case has engendered much confusion, difficulty, and unnecessary work because of defense counsel's failure to file a brief and apprise this Court of some of the errors about which he now complains."

Counsel for the Association introduced the docket and files from seven or eight probate cases filed by Respondent in the County Court of Carter County. Petitions in these cases were filed between April, 1960, and March, 1965. These records show that Letters were issued and notice to creditors was given. Inventories were not filed and no further action appears to have been taken. The petitions for probate indicate that in five or six of these cases the deceased owned real property.

Counsel for the Association stated during the hearing that ten additional complaints had been filed against Mr. Champion prior to the instant hearing but had been found to be without substantial merit. He also introduced an exhibit showing that Mr. Champion had been delinquent or tardy in paying his bar dues each year during the past ten years.

Counsel for the Association introduced evidence concerning Mr. Champion's handling of two criminal cases wherein Mr. Bearden and Mr. Crumb were separately charged for murder. Since the briefs refer to the decisions of the Court of Criminal Appeals in those cases, and another appeal wherein Mr. Champion was charged with contempt, we cite them, as follows: Bearden v. State, Okl. Cr., 458 P.2d 914; Crumb v. State, Okl. Cr., 458 P.2d 909; and Champion v. State, Okl. Cr., 456 P.2d 571.

Prior to these trials two continuances were applied for and granted which postponed the trials from May, 1967, to October 25th and 26th, 1967, because Mr. Champion produced evidence that he was suffering from a bleeding ulcer. Notice was given at the time of the second continuance that a third continuance would not be granted because of Mr. Champion's ulcer.

On October 23, 1967, Mr. Champion presented an application (vigorously according to the Judge) to disqualify the trial judge, and on October 25, 1967, when the Bearden case was called for trial Mr. Champion announced from time to time that he was unable to try the cases; was physically ill; refused to examine the jurors; refused to make an opening statement; and refused to cross examine the State's witnesses, or present any evidence for the defendant. The trial judge testified that several times during the trial he called Mr.

Champion and Mr. Bearden to the bench and offered to declare a mistrial and set the case over and appoint an attorney to represent the defendants; that the defendants refused in each instance upon advice from Mr. Champion not to do so. That prior to the trial during a hearing on one of Mr. Champions motions Mr. Champion stated that "he was going to stand there with him and stand there mute and not say anything." That Mr. Champion would not participate in the trial but "would arise and make a speech every now and then."

Mr. Bearden was convicted of manslaughter. Mr. Champion filed motion for new trial but did not appear on November 6, 1967, for sentencing, and sentencing was postponed until the following day when Mr. Champion appeared. Mr. Champion followed the same procedure in the trial of the Crumb case.

In response to questions the trial judge testified:

> "If I have ever tried a case that Mr. Champion has been involved in without having anywhere from one to several motions for continuances, I can't recall it. I don't think he has ever appeared at the time the case was set for trial in the first instance."

He further testified:

> "He had Default Judgments taken against him because he has failed to appear and he's failed to file any pleadings and he failed to make appearances. He will file something and then fail to make an appearance to have it ruled on."—"This conduct has been going on for ten years."
>
> "I have an average of three people a week walk in or come in to see me asking, for example, why I don't hear their case, and I say, 'I don't know what you're talking about; what case is that?" (referring to Champion's cases).
>
> "As to Mr. Champion's competency, I think he is most competent. He is a very good lawyer."

In response to the Association's evidence Mr. Champion testified at length. He admitted being slow in handling the business of some of his clients and in this connection testified in part:

> "This I will be frank with the Board about, that I've been derelict—there's no answer to that."—"There have been extenuating circumstances down the line in this thing—".
>
> "I didn't realize the time situation was like it is."

In connection with the Eaves complaint Mr. Champion testified

> "Q. It sounds to me as if your job in this deal with Eaves was to just keep him in his house as long as you could.
>
> "Mr. Champion: Uh huh, that's correct. And I was—he asked me to keep him in for a period of six months. I told him that I would certainly do all that I could. I kept him in much longer than that." (This violates his oath as an attorney.)

In connection with his applications for continuances in criminal cases Mr Champion testified:

> "Well, I'll tell you one thing, gentlemen, I've played the old coon on a log game, I've done it the best I can. I have used time to my advantage."
>
> "With anybody, I'll do the best I can to delay it if it's in a criminal

case, in a criminal case sometimes you can use time to your advantage."

"Q. You say that you tried to delay things in a matter?"

"Mr. Champion: Time is a great healer of problems."

In connection with his remaining mute in the trials of the Bearden and Crumb cases Mr. Champion testified:

"Q. Didn't you think that by setting through the trials that you could get a reversal"

"Mr. Champion: That is not the—all the time I am working things through my mind. I am not going to say that any of these things didn't escape my mind."

In Mr. Champion's appearance before the Board he seemed to be of the opinion that most of his troubles were provoked by the treatment he had received from the trial judge. However, in that connection he was asked: "Mr. Champion, do you think that if you would just straighten up and practice law as you're capable of practicing, that maybe in that way you could make your peace with Judge Shilling?" "A. I believe it would help."—"Q. It seems to me that if you would take time to get straightened up and practice law like the other lawyers, that you could clear up this trouble that you're having with Judge Shilling." "A. I believe you are right."

In Mr. Champion's briefs he continues to prosecute the district judge; he finds fault with counsel for the Bar Association in failing to advise him that the hearing to determine his moral qualifications and his competency to practice law would be an adversary proceeding; criticizes the Association for exposing him by sending an investigator into his community to investigate him, and finds fault with the Rules for reinstatement to practice following suspension for failure to pay bar dues.

It may be that some of Mr. Champion's complaints have some merit. But in noticing his complaints we do not lose sight of the fact that it's Respondent's conduct that is on trial.

Canon 21, Canons of Professional Ethics, 5 Ch. 1, App 3, O.S. 1961, Vol. 1, p. 377 (approved and adopted by this Court in 1958), provides:

"It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes."

In State ex rel. Oklahoma Bar Association v. Foster, Okl., 454 P.2d 654, we held that illness of an attorney does not necessarily shield the attorney from his professional responsibility to his client, and where the facts warrant the attorney may be disciplined notwithstanding his illness. In the body of the opinion we said:

"An attorney should never forget that he occupies a very important role in the administration of justice. He is an officer of the courts. In a very real sense he is an officer of the third branch of government. He is licensed to assist litigants and the courts in the administration of justice. * * * The wheels of justice should start turning when an attorney accepts employment. As an officer of the court respondent must share some of the responsibility for the expeditious administration of justice when he accepts professional employment."

From Mr. Champion's conduct and testimony, as revealed by the record in this proceeding, it would appear that he has been unaware of his responsibilities

as an attorney; and unaware of the effort that has been made by the Bench and Bar during recent years to upgrade both the capacity and conduct of lawyers and judges. In the Preamble to the Canons of Professional Ethics, as adopted by this Court in 1958, it is said:

> "In America, where the stability of the Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiability of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained, unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men."

The concept that "a lawyer is an officer of the courts" is not an idle expression to impress the laity, but is indicative of his responsibility to assist the courts in the administration of justice.

Respondent was aware that he was ill, and as he testified, more aware of that fact than any one else. He makes a point of the fact that he offered to return his fees in the Bearden and Crumb cases so that other counsel could be employed. The trial judge did not refuse that offer, but agreed to appoint defense counsel at the expense of the State. Mr. Champion did not return the fees, did not assist his clients in the selection of other counsel, but elected to stand mute. As an officer of the court, sharing the responsibility of the court for the proper administration of justice both to his clients as well as to the Public, his duty was clear; either return the fees, or share his fees and employ competent counsel, or else try the cases. He did neither.

Mr. Champion's testimony that "I have used time to my advantage—I'll do the best I can to delay it if it's in a criminal case—Time is a great healer of problems"—tends to corroborate the trial judge's testimony "If I have ever tried a case that Mr. Champion has been involved in without having anywhere from one to several motions for continuances, I can't recall it."

We conclude that Mr. Champion's conduct in the Bearden and Crumb cases was indefensible and indicates an irresponsibility to his clients as well as to the courts.

In view of Respondent's contention that he was not aware that the hearing before the Board would be an adversary proceeding we have permitted him to file evidence in his behalf which was not considered by the Board of Governors. We have considered this evidence in connection with the record before us and have concluded that Respondent has been afforded due process, and that he must be disciplined.

The record discloses that Mr. Champion has been a general practitioner in Ardmore, Oklahoma, for almost thirty years. He is evaluated by the District Judge as "most competent" and "a very good lawyer." Since the death of his father and other members of the "Champion" partnership he has been a "solo" practitioner. He testified that he and his wife have had marital difficulties and that his son's health has consumed much of his time. He does have problems with his health and has been ill. He stated at the conclusion of the hearing before the Board of Governors that the evidence presented made him aware of his derelictions. He stated that he was not equipped to earn a living except in the practice of law. He requested reinstatement, and agreed that if reinstated to the practice of law he would complete the probate proceedings he has pending and be more attentive to his clients and responsive to the courts.

We are of the view that the Board's recommendation that he be denied resinstatement is supported by the evidence. However, it is our further view that he should be publicly reprimanded and we do so, believing that his record as herein exposed and our comments adequately does so. We have concluded to postpone final action on Respondent's application for reinstatement for one year from the effective date of this decision, or until further order of this Court, and he will be on probation during that period. His temporary permit to practice law will continue during the probation period or until the further order of the Court. He will pay accruing Bar Dues. He will be required to pay the cost of the transcript in this proceeding during his probation period, and may do so in installments in such manner as may be authorized by Order of this Court.

IRWIN, C.J., and DAVISON, WILLIAMS, BLACKBIRD and LAVENDER, JJ., concur. HODGES and McINERNEY, JJ., dissent.

McINERNEY, J. (dissenting). The evidence adduced at respondent's lengthy hearing, as summarized in the majority opinion, indicates to me the inability of respondent to conduct himself within the framework of the Canons of Professional Ethics. The administration of justice, in my opinion, would be better served by the denial of the application for reinstatement to the practice of law on the grounds of respondent's demonstrated lack of moral qualifications and competency to practice law.

I dissent from the majority opinion.

I am authorized to state that Justice HODGES concurs in these views.

FINLEY, et al. v. WEST.

No. 42262. March 3, 1970.

(Syllabus.)

1. As between landlord and tenant, the tenant's right to remove trade fixtures does not come to an end when the tenant vacates the premises, where the landlord has expressly or impliedly given his consent that they be left on the premises without loss of the tenant's right of removal. And where such consent has been given the fixtures' vendor under conditional sales contract, his right of removal similarly survives.

2. Where, in an action by such vendor, against the landlord's successors in title, for replevin of the fixtures, plaintiff proves the defendants gave such consent, defendants, in order to prevail on the ground that plaintiff's right of removal has been lost by lapse of time, must prove it.

Appeal from Court of Common Pleas, Oklahoma County; Ben LaFon, Judge.

Action for replevin of heating and air conditioning equipment, by its vendor, under a conditional sales contract, against the successors to the former landlord of his vendee. After judgment for plaintiff, and the overruling of defendants' motion for a new trial, the latter appeal. Affirmed.

Cantrell, Douglass, Thompson & Wilson, Kenneth J. Wilson, Oklahoma City, for plaintiffs in error.

Francis M. Pickel, Jr., Oklahoma City, for defendant in error.

BLACKBIRD, J. This appeal involves the broad question of whether or not defendant in error, hereinafter referred to as "plaintiff", was entitled to replevin certain heating and air conditioning equipment he sold a Mr. and Mrs. Lapp in 1962, for installation and use in a dining establishment at the Rail Fence Motel called the "Lamplighter Cafe",